



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/555,474	10/02/2006	Ralph-Dieter Maier	17488/055002	4054

85440 7590 10/11/2011  
Osha Liang LLP (Novolen)  
Two Houston Center  
909 Fannin Street, Suite 3500  
Houston, TX 77010

EXAMINER
----------

LENIHAN, JEFFREY S

ART UNIT	PAPER NUMBER
----------	--------------

1765

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

10/11/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@oshaliang.com  
bergman@oshaliang.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/555,474	MAIER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey Lenihan	1765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-7,9,11-24 and 27-32 is/are allowed.
- 6) ☒ Claim(s) 25 and 26 is/are rejected.
- 7) ☒ Claim(s) 8 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :2/11/2010,5/5/2010,8/31/2010,1/13/2011,7/21/2011.

### **DETAILED ACTION**

1. This Office Action is responsive to the amendment filed on 2/11/2010.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

### ***Continued Examination Under 37 CFR 1.114***

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/11/2010 has been entered.

### ***Claim Objections***

5. Claims 8 and 10 are objected to because of the following informalities: In both claims 8 and 10, replace "claims 1" with "claim 1" in the first line. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

6. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agarwal et al, WO 02/32985 (of record).

The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference.

7. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kioka et al, US4822840 (of record), in view of Fuchs et al, US2006/0167185 (of record).

The rejection stands per the reasons outlined in the previous Office Action, incorporated herein by reference.

### ***Response to Arguments***

8. Applicant's arguments, see pages 21-23 and 28-26, filed 2/11/2010, with respect to the rejection of claims 1-10-24, and 27-32 over both Agarwal and Kioka have been fully considered and are persuasive. Applicant cites the data from Comparative examples 41 and 42 in the instant specification to demonstrate that the use of metallocene catalysts corresponding the formula disclosed in the prior art does not necessarily result in a composition having a xylene soluble fraction characterized by the claimed properties of properties of weight average molecular weight ( $M_w$ ) and intrinsic viscosity now required by the amended independent claims 1, 13, and 27. The rejections of the claims over Agarwal and Kioka have been withdrawn.

9. Applicant's arguments regarding the rejection of claims 25 and 26 filed 2/11/2010 have been fully considered but they are not persuasive.

Art Unit: 1765

10. Applicant's arguments are directed towards a composition having a xylene-soluble fraction having specified properties of  $M_w$  and intrinsic viscosity; however, it is noted that these features are not recited in either one of rejected claims 25 and 26. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Independent claim 25 recites a composition comprising "up to about 10 weight percent" of a fraction soluble in xylene under specified conditions; the range "up to about 10 weight percent" reads on compositions wherein the amount of this xylene-soluble fraction is 0%. The composition of claim 25 therefore does not require the xylene-soluble fraction; no data has been presented demonstrating that the prior art composition would not meet the other claimed limitations. The rejections of claim 25 are therefore maintained.

11. With regards to claim 26, the examiner notes that the values of the ratio of xylene-soluble components in comparative examples 41 and 42 in the specification are similar to the values reported in Table 3 for inventive examples 10, 11, and 13. The cited examples therefore do not demonstrate an unobvious difference between the claimed invention and the prior art. The rejections of claim 26 are therefore maintained.

12. Applicant argues that the instant application is directed towards sealing layer grade polypropylene whereas Agarwal is directed towards foamable compositions, and that one of ordinary skill in the art therefore would not expect the properties of the prior art composition and the claimed composition to be the same. This is not persuasive. The intended use of the claimed invention must result in a structural difference between

Art Unit: 1765

the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Furthermore, the examiner notes that the claims only recite polymer blends comprising the claimed components; the claims do not require sealing compositions.

13. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present; see *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). "The PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product. Whether the rejection is based on inherency under 35 U.S.C. 102, on *prima facie* obviousness under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same..." as that required with respect to product-by-process claims. *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). As discussed in MPEP § 2113, once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product; see *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983). As discussed in paragraphs 9-10 of the Office Action mailed on 4/6/2009, Agarwal discloses a composition comprising first polymer and a second polymer which are combined in the same ratio as claimed components (a) and (b). Said first polymer is a random propylene/ethylene copolymer having an ethylene

Art Unit: 1765

content less than 10% by weight and a melting point ( $T_m$ ) preferably greater than 115 °C, corresponding to claimed component (a). Said second polymer is a propylene/ethylene copolymer having a propylene content as low as 65% by weight and is characterized by  $T_m$  in the range of 25 to 110 °C, corresponding to claimed component (b). Agarwal further discloses the use of metallocene catalysts which correspond to the formula disclosed in the instant specification to prepare the prior art composition. As the prior art composition comprises the same amounts of the same polymers prepared using the same catalysts as the claimed invention, it is reasonably expected that the properties of the prior art composition necessarily be the same as claimed and inherently be not materially different from those of the claimed invention. The burden is therefore shifted to applicant to provide evidence of an unobvious difference between the claimed invention and the prior art.

#### ***Allowable Subject Matter***

14. Claims 1-24 and 27-32 are allowed.

15. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record is Agarwal et al, WO 02/32985. Agarwal disclose a polymer blend comprising 50 to 99.9% by weight of a random propylene/ethylene copolymer having a melting point ( $T_m$ ) greater than 110 °C and 0.1 to 50% by weight propylene/ethylene copolymer having  $T_m$  in the range of 25 to 110 °C. The prior art does not teach nor does it fairly suggest a process of making (for claim 27) a composition (for independent claims 1, 13) defined by the claimed combination of

Art Unit: 1765

limitations of a first random propylene copolymer having the claimed properties of melting point and propylene content and a second random propylene copolymer having the claimed properties of melting point and propylene content, wherein the polymer blend comprises a xylene soluble fraction having the claimed properties of weight average molecular weight and intrinsic viscosity.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Lenihan whose telephone number is (571)270-5452. The examiner can normally be reached on Monday through Thursday from 7:30-5:00 PM, and on alternate Fridays from 7:30-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Irina S Zemel/  
Primary Examiner, Art Unit 1765

/Jeffrey Lenihan/  
Examiner, Art Unit 1765

/JL/